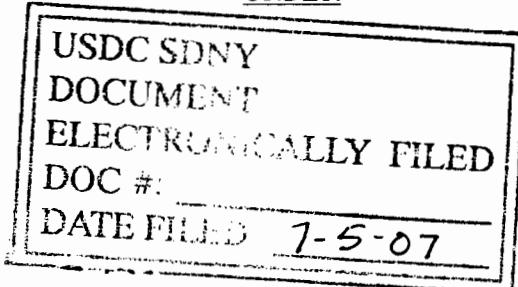


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
 TONY MARCUS, :
 :
 :
 Petitioner, : 04 Civ. 0064 (JSR)
 :
 :
 -v- :
 :
 :
 SUPT. JAMES CONWAY, :
 :
 :
 Respondent. :
 ----- x
 JED S. RAKOFF, U.S.D.J.



On April 30, 2007, the Honorable Kevin N. Fox, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned case recommending that this petition for habeas corpus be dismissed.

After the Report issued, petitioner filed an objection dated May 8, 2007. Having considered the matter de novo in light of this objection, the Court finds itself in total agreement with the reasoning set forth in the Report, which the Court hereby adopts by reference (with the exception of one typographical error in the Report which is hereby corrected¹) and, for the reasons therein, dismisses Marcus's habeas petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, see 28 U.S.C. § 2253, and the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Moreover, as petitioner's claim lacks any

¹ Specifically, the citation to Strickland v. Washington on page 11 as "467 U.S. 1267, 104 S. Ct. 3562 (1984)" is hereby amended to read "466 U.S. 668, 104 S. Ct. 668 (1984)."

arguable basis in law or fact, permission to proceed in forma pauperis is also denied. 28 U.S.C. § 1915(g); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York

July 3, 2007